

Replying to the single comment (from the chair of the CIDVC) opposing my petition to Amend Rule 1(B)(1)(d) regarding the term "victim": Perhaps I wasn't as clear as I could have been, but the chair misrepresents my petition.

I did not request "that where the term 'victim' is used, it be changed to 'alleged victim.'" Rather, I requested that the Rule "should be repealed, and further occurrences of the word 'victim' in the Rules of Procedure should be changed to 'plaintiff' [in the main] or 'alleged victim,' [only] as appropriate [generally when referring to children or the disabled], per Appendix A."

Also, there are errors in the chair's exhaustive cites of appearances of the word "victim." To correct the record, the word "victim" appears in 6(C)(3)(b)(2) through (5); 6(D)(2)(b) and 6(E)(4)(e)(1). [According to the Westlaw page from the Court's own website.] In the latter two instances, I am content with the phraseology "alleged victim" used there given the context of those two Rules. As such, the latter two do not appear in my Appendix A.

Despite the misrepresentation of my petition, if I understand the chair's position correctly, he is arguing that my petition to change the term "victim" to "plaintiff" should be rejected because:

1) the DVRC simply quoted the Legislature verbatim, regardless of the "structural error" caused by its use of the prejudicial term "victim," and nothing can be done.

2) even if, in the real world, the term "victim" really means "women," in the rarefied world of law, since the ARPOP is careful not to use the term "women," this is not a 14th Amendment equal protection issue.

Taking the first: I acknowledged in my petition that the Rules here appeared to be taken verbatim from A.R.S. § 13-3601. Does this mean the Rules must always recite the law verbatim? No. Ironically, even the CIDVC concurs.

The committee, arguing here that it must recite the law as is, argues inconsistently in its comment to my Petition on weapons¹ that it's okay there to have a Rule absent any law it can recite!

So if the committee feels it can put words in the mouth of the Legislature there, how much more should it feel it can change an existing word here. Especially since this would be correcting the Rule to conform to a very specific overarching constitutional right (i.e., Equal Protection under the law), and correcting a (presumable) error by the Legislature.

While I agree in principle that the cleanest way to deal with this issue would be for the Legislature to correct the A.R.S., absent a court challenge to force the issue, that ain't gonna

¹ Comment to Amend [sic] Rule 6(E)(4)(c)(2), Supreme Court No. R-09-0045

happen. And there ain't gonna be a court challenge.² That is what this Rules forum is for.

Nevertheless, since it's the Court's Rules we're talking about here which are easier to modify, we need not wait for the Legislature to correct its error. Especially because of the structural error inherent in the Legislature's terminology.³ When, before any evidentiary hearing or trial, the plaintiff is called a de facto "victim" by the Court's own Rules . . . well, you can't get much more prejudicial than that. Courts often grant change of venues for prejudice, sustain objections about prejudice, move to strike for prejudice, etc. How much more then should the court act here to remove prejudice in its own Rules?

[I parenthetically add that the Legislature did better in sister A.R.S. § 13-3602, where it used the less prejudicial term "alleged victim." Without knowing the Legislative history, I presume the inconsistency between the two sister laws is simply the unfortunate result of disparate rule committees in time or space.]

As to point 2: I acknowledge that, in theory, the ARPOP is gender neutral, and from an Ivory Tower point of view, the chair is technically correct that the Fourteenth Amendment is not implicated here. (But this does not nullify my previous point about prejudice.)

But Rules are not abstracts. They are meant to be used, and indeed are used in the real world. Here in the real world, the reality is, the implementation of the ARPOP is not gender neutral. And I thank the chair for acknowledging that the data may verify such.

However, we need not collect data to confirm what has already been declared as fact. I pointed out in my petition that, while the federal equivalent of Arizona Domestic Violence laws are also gender neutral, the mere title of the Federal Act, the "Violence Against Women" Act shows its true colors. Furthermore, I have surveyed the Arizona Peace Officers Standards & Training Board's Lesson 3.3, titled "Domestic Violence" and followed the AZPOST's funding trail for VAMA implementation in Arizona.⁴ A cursory reading proves that Domestic Violence law is not gender neutral. It clearly favors women in the real world of law enforcement.

Furthermore, in the funding trail for federal money to POST via VAMA, I see organizations like The Division for Women in Governor Brewer's Office for Children, Youth and Finance; The DOJ's Office on Violence Against Women, and so on. Clearly one sided.

² Since I don't know the law, you tell me. Is this actionable? Can a citizen sue the court for Injunctive Relief?

³ Structural errors are those which "deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for guilt or innocence." Additionally, errors are considered structural when they "affect the 'entire conduct of the trial from beginning to end,'" and thus taint "the framework within which the trial proceeds.'" Quoted from *Arizona v. Henderson*, 209 Ariz. 300 ¶ 12, 100 P.3d 911 (App. 2005)

⁴ The Arizona POST is the overarching central agency which sets standards and training requirements for law enforcement officers throughout the State of Arizona. See <http://www.azpost.state.az.us/>

Clearly, in application then, "Domestic Violence" policies are prejudicial toward women. Many of the money trail organizations are not shy about declaring such up front.

So while a reading of the ARPOP does not violate the letter of the Equal Protection clause, its application violates the spirit of the law. As with affirmative action, there are unintended consequences. We should mitigate that even if it's not an outright violation of the 14th Amendment.

The Code of Conduct has been cited by some of the commentators here to justify existing ARPOP rules under fire. In that spirit, I quote the first sentence in the preamble from the Code: "An independent, fair, and impartial judiciary is indispensable to our system of justice."

The use of the word "victim" in the ARPOP is not impartial and does not promote the perception fairness. The word "victim" should be changed to "plaintiff" as proposed in my petition per Appendix A. There is no downside to doing so.

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